

1 James R. Condo (#005867)
2 Amanda C. Sheridan (#027360)
3 SNELL & WILMER L.L.P.
4 One Arizona Center
5 400 E. Van Buren, Suite 1900
Phoenix, AZ 85004-2204
Telephone: (602) 382-6000
jcondo@swlaw.com
asheridan@swlaw.com

6 Richard B. North, Jr. (admitted *pro hac vice*)
7 Georgia Bar No. 545599
Matthew B. Lerner (admitted *pro hac vice*)
8 Georgia Bar No. 446986
NELSON MULLINS RILEY & SCARBOROUGH LLP
9 Atlantic Station
201 17th Street, NW, Suite 1700
Atlanta, GA 30363
Telephone: (404) 322-6000
richard.north@nelsonmullins.com
matthew.lerner@nelsonmullins.com

10 *Attorneys for Defendants*
11 *C. R. Bard, Inc. and*
12 *Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability Litigation

No. 2:15-MD-02641-DGC

**DEFENDANTS' MOTION AND
MEMORANDUM IN SUPPORT OF
MOTION TO DISQUALIFY
ROBERT VOGELZANG, M.D. AND
KUSH DESAI, M.D. AS
TESTIFYING EXPERTS; AND
SCOTT RESNICK, M.D. AND
ROBERT LEWANDOWSKI, M.D.
AS CONSULTING EXPERTS FOR
PLAINTIFFS**

(Assigned to the Honorable David G. Campbell)

MOTION

Defendants C. R. Bard and Bard Peripheral Vascular, Inc. (collectively, "Bard") respectfully move this Court to disqualify two of the plaintiffs' testifying expert witnesses, Robert Vogelzang, M.D. and Kush Desai, M.D.; and two of the plaintiffs' consulting experts, Dr. Scott Resnick, M.D. and Robert Lewandowski, M.D. This motion is supported by Defendants' Memorandum of Points and Authorities, which is filed herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction

The four doctors who are subject to Bard's motion are colleagues at Northwestern University's Interventional Radiology department. In late 2015 and early 2016, Dr. Scott Resnick worked with Bard's counsel, Nelson Mullins Riley & Scarborough LLP, as an expert in the IVC filter litigation. Dr. Resnick has also been a consultant to Bard regarding the design inputs of IVC filters (2012, 2013, 2014); and IVC filter product development and adverse event investigation (2008).

Bard recently learned that Dr. Resnick met with the plaintiffs' counsel at least nine times and was intimately involved, along with Robert Lewandowski, as consulting experts in developing and drafting three reports of the plaintiffs' testifying experts, Dr. Robert Vogelzang (reports dated March 2, 2017, and April 7, 2017) and Dr. Kush Desai (report dated April 19, 2017 (co-signed by Dr. Vogelzang)). Given the circumstances, allowing Dr. Resnick and his colleagues to act as the plaintiffs' experts would continue to expose Bard's confidential information and Nelson Mullins' mental impressions of the IVC filter litigation to the plaintiffs and their testifying experts, Drs. Vogelzang and Desai, thereby irreparably prejudicing Bard. Moreover, allowing these physicians to remain the plaintiffs' experts would encourage parties to retain a conflicted and undisclosed expert to actively collaborate on disclosed experts' opinions and inappropriately leverage confidential information obtained through a confidential relationship with the moving party. Accordingly, Bard respectfully requests that this Court enter an order disqualifying

1 the plaintiffs testifying experts, Drs. Vogelzang and Desai, and their consulting experts,
 2 Drs. Resnick and Desai.

3 **II. Factual and Procedural Background**

4 **A. Bard's Attorneys Retained Dr. Resnick as an Expert in the IVC Filter Litigation.**

5 On October 6, 2015, Nelson Mullins formally retained Dr. Resnick as an expert for
 6 Bard in the IVC Filter litigation. *See* Ltr. from Counsel for Bard to S. Resnick, Oct. 6,
 7 2015, attached as Exhibit A. As part of his retention, Dr. Resnick agreed not to work or
 8 consult for any other party in IVC filter product liability litigation. *See id.* Dr. Resnick
 9 then met with counsel for Bard, who disclosed mental impressions regarding the strengths
 10 and weaknesses of the parties' themes and theories of the litigation, and the strengths and
 11 weaknesses of the relevant medical evidence. Dr. Resnick's expert services also included
 12 reviewing relevant medical materials about a specific plaintiff and medical literature for
 13 discussion with counsel. Dr. Resnick was paid \$5000 in 2016 for his work as Bard's
 14 expert.

15 **B. Dr. Resnick Consulted with Bard Regarding IVC Filters in 2008, 2012, 2013,
 16 and 2014 and He Was Exposed to Confidential Information about the
 17 Development, Design, and Use of Bard's IVC Filters.**

18 In 2008, 2012, 2013, and 2014, Dr. Resnick was also a paid consultant for Bard in
 19 matters relating to the central issues in this litigation, including the design, development,
 20 and adverse event investigation of Bard's IVC filters. *See* Consulting Agreements
 21 between Bard and S. Resnick, July 31, 2008, at Ex. A (tasks include "Provide input in
 22 products in development including Filters Consult concerning product failure
 23 investigations and potential health hazards"); Feb. 7, 2012, at Ex. A ("Assisting in
 24 the design inputs on filters"); Aug. 1, 2013, at Ex. A ("Assisting in the design inputs on
 25 filters"), collectively attached as Exhibit B. During the course of his 2012, 2013, and
 26 2014 consulting work, Dr. Resnick was also expected to conduct site visits to consult with
 27 Bard personnel while carrying out his duties. *See id.* During this time, Dr. Resnick's IVC
 28 filter-related work with Bard included helping to design an animal study protocol for the

1 G2 Platinum filter, meeting with Bard to evaluate plans for IVC filter development,
 2 consultation with Bard regarding the Denali Filter, and helping to design the Denali
 3 Tubular Concept Animal Study Protocol.

4 **C. Dr. Resnick Collaborated with Plaintiffs' Counsel and Testifying Experts on**
 5 **Several Expert Reports.**

6 Dr. Resnick is colleagues with Drs. Lewandowski, Vogelzang, and Desai at
 7 Northwestern Memorial Hospital's Vascular and Interventional Radiology department.
 8 Together, the four doctors formed a consultancy called, SBBK Consultants, LLC,
 9 specifically for the Bard IVC filter litigation. K. Desai Dep. Tr. 29:17 to 30:5, June 6,
 10 2017, excerpts attached as Exhibit C. As of June 5, 2017, SBBK Consultants had billed
 11 the MDL plaintiffs \$132,875, which the four doctors divided evenly. Ltrs. from S.
 12 Resnick to Counsel for Pls., Mar. 15, Apr. 4, Apr. 24, 2017, collectively attached as
 13 Exhibit D; Ex. C, Desai Dep. Tr., 30:10 to 31:9.

14 All four doctors were extensively involved in all aspects of the expert work on
 15 behalf of the plaintiffs. All four participated in meetings with plaintiffs' counsel,
 16 reviewed the reports of other plaintiffs' experts, reviewed the medical literature, reviewed
 17 the reports of Bard's experts, reviewed Bard's internal documents that were produced
 18 during discovery, met amongst themselves, and drafted three separate Rule 26 reports. *See*
 19 Ex. D. Dr. Vogelzang signed the first two reports dated March 2 and April 7, 2017; and
 20 Drs. Vogelzang and Desai each signed the report dated April 19, 2017. Dr. Resnick and
 21 Dr. Lewandowski did not sign any of the reports.

22 Dr. Resnick met in person or by phone with plaintiffs' counsel at least nine times
 23 for a total of 10.5 hours, and usually alongside Drs. Vogelzang, Desai, and Lewandowski.
 24 *See id.* Dr. Resnick also met with separately with Drs. Vogelzang, Desai, and/or
 25 Lewandowski for another 4.5 hours. *See id.* Finally, Dr. Resnick spent 25.5 hours drafting
 26 the three expert reports that only Dr. Vogelzang and/or Dr. Desai signed. *See id.*

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1 Bard learned of these facts at the depositions of Drs. Vogelzang and Desai in June.¹

2 **III. Argument and Citation to Authority**

3 **A. Legal Standard for Disqualifying Experts**

4 Federal courts have “the inherent power to protect the integrity of the adversary
 5 process, protect privileges that otherwise may be breached, and promote public
 6 confidence in the legal system” by disqualifying experts who present a conflict of interest.
 7 *Hewlett-Packard Co. v. EMC Corp.*, 330 F. Supp. 2d 1087, 1092 (N.D. Cal. 2004) (citing
 8 *Campbell Indus. V. M/V Gemini*, 619 F. 2d 24, 27 (9th Cir. 1980)). The rules that govern
 9 expert disqualification are designed to protect against the potential or threat that the
 10 moving party’s confidences may be disclosed; thus, an actual showing of a breach is not
 11 required. See *Michelson v. Merrill Lynch Pierce Fenner & Smith, Inc.*, 1989 WL 31514,
 12 at *4 (S.D.N.Y. Mar. 28, 1989).

13 There are two tests that federal courts apply to determine whether a party’s expert
 14 should be disqualified: the bright-line test and the two-part test. “Under the bright-line
 15 rule, when it is undisputed that an expert, who was previously retained by the adverse
 16 party in the same litigation and received confidential information as part of that earlier
 17 retention, is now blatantly side-switching, disqualification is clear.” *Wang Labs., Inc. v.*
 18 *Toshiba Corp.*, 762 F. Supp. 1246, 1248 (E.D. Va. 1991).

19 Courts will apply the two-part test when the expert’s “side-switching” is less
 20 blatant. The two-part inquiry to determine whether an expert should be disqualified based
 21 on a conflict of interest is: (1) was it objectively reasonable for the moving party to
 22 conclude that it had a confidential relationship with the expert and (2) did the moving

23
 24
 25 ¹ Although Dr. Vogelzang’s March 2 and April 7, 2017, reports state that he worked with
 26 Drs. Resnick and Desai on IVC filter issues in a clinical setting, they do not mention that
 27 Drs. Desai and Resnick actively collaborated on developing the specific opinions in the
 28 reports. The jointly written report of Drs. Vogelzang and Desai, dated April 19, 2017,
 but Bard did not learn of the full extent of the Dr. Resnick’s role until the depositions of
 Drs. Vogelzang and Desai in June.

1 party disclose confidential information to the expert? *See Rhodes v. E.I. Du Pont*
 2 *Newmour and Co.*, 558 F. Supp. 2d 660, 667 (S.D. W. Va. 2008).

3 To establish whether a confidential relationship exists between the moving party
 4 and the expert, courts consider a number of factors. Such factors include: whether the
 5 relationship was one of long standing and frequent contacts; whether the expert is to be
 6 called as a witness in the underlying case; whether the moving party funded or directed
 7 the formation of the opinion; whether the parties entered into a formal confidential
 8 agreement; whether the expert was retained to assist in litigation; whether work product
 9 was discussed or documents were provided to the expert; whether the expert was paid a
 10 fee; and whether the expert derived any specific ideas from work done under the direction
 11 of the retaining party. *Id.*; *see also Hewlett-Packard Co.*, 300 F. Supp. 2d at 1093.
 12 Establishing a reasonable expectation of a confidential relationship is not a high bar. *See*
 13 *AstraZeneca Pharmaceuticals, LP v. Teva Pharm. USA, Inc.*, 2007 WL 4292384, at *2
 14 (D.N.J. Dec. 4, 2007).

15 To establish whether the moving party disclosed confidential information to the
 16 expert, the analysis centers on whether confidential information that is sufficiently related
 17 to the instant litigation was transmitted to the expert. *See Rhodes*, 558 F. Supp. 2d at 667.
 18 Information is considered confidential if it is “of either particular significance or
 19 . . . readily identified as either attorney work product or within the scope of the attorney
 20 client privilege.” *Hewlett-Packard Co.*, 300 F. Supp. 2d at 1093. Such information
 21 includes: the moving party’s themes, theories of liability and damages; the moving party’s
 22 potential defenses; the role both sides’ experts could play in litigation; and exposure to
 23 confidential information directly relating to the central issues of the litigation. *See id.*
 24 *Marvin Lumber & Cedar Co. v. Norton Co.*, 113 F.R.D. 588, 591 (D. Minn. 1986).

25 If the answer to each inquiry of the two-part test is “yes,” the next consideration is
 26 whether policy objectives favor disqualification. The policy objectives in favor of
 27 disqualification include the court’s interest in preventing conflicts of interest, maintaining
 28 judicial integrity, and ensuring that confidentiality agreements are honored. *See Hewlett-*

1 *Packard Co.*, 300 F. Supp. 2d at 1092-1093, 1095. These interests in favor of
 2 disqualification are then weighed against interests discouraging disqualification, including
 3 maintaining accessibility to experts with specialized knowledge, the availability of other
 4 experts, and whether the nonmoving party will be unduly burdened by disqualification.
 5 See *Rhodes*, 558 F. Supp. 2d at 667-668.

6 Finally, the two-part expert disqualification analysis applies to potentially
 7 conflicted entities and individual experts in the same way. See *Kane v. Chobani*, 2013 WL
 8 3991107 at *5 (N.D. Cal. Aug. 2, 2013) (finding that confidential relationship and
 9 exchange of confidential information between moving party and experts in consulting
 10 firm merited disqualification of entire firm); *Mays v. Reassure Am. Life Ins. Co.*, 293 F.
 11 Supp. 2d 954, 957-58 (E.D. Ark. 2003) (applying two-prong expert disqualification
 12 analysis to CPA firm); *In re Ambassador Group., Inc.* 879 F. Supp. 237, 241-246
 13 (E.D.N.Y. 1994) (same).

14 **B. Drs. Resnick, Vogelzang, Desai, and Lewandowski Should Be Disqualified
 15 Under The Bright-Line Test.**

16 In the seminal case *Wang Labs., Inc. v. Toshiba Corp.*, the Eastern District of
 17 Virginia case outlined the bright-line test to disqualify “side-switching” experts who
 18 engage in blatant side-switching. 762 F. Supp. 1246, 1248 (E.D. Va. 1991). Federal
 19 courts treat “side-switching [as] the paradigm of inappropriate expert conduct,” which
 20 threatens judicial integrity and public confidence in the fairness of the legal process. *Id.*
 21 The *Wang* court reasoned that “no one would seriously contend that a court should permit
 22 a consultant to serve as one party’s expert where it is undisputed that the consultant was
 23 previously retained as an expert by the adverse party in the same litigation and had
 24 received confidential information from the adverse party pursuant to the earlier retention.”
 25 *Id.*

26 During Dr. Resnick’s work as Bard’s expert in the IVC filter litigation in 2015 and
 27 2016, counsel for Bard met with Dr. Resnick, shared mental impressions regarding the
 28 strengths and weaknesses of the parties’ themes and theories of the litigation, and the

1 strengths and weaknesses of the relevant medical evidence.

2 Despite agreeing not to consult with any other party in IVC filter product liability
3 litigation and the clear conflict of interest in consulting directly against Bard in IVC filter
4 product liability litigation, Dr. Resnick has worked closely with the plaintiffs as a
5 consulting expert with plaintiffs' counsel, had direct and extensive discussions with Drs.
6 Vogelzang, Desai, and Lewandowski about the issues in this litigation, and was directly
7 and extensively involved in the formation and drafting of three expert reports along with
8 Drs. Vogelzang, Desai, and Lewandowski. Given this extensive involvement, any
9 suggestion that Dr. Resnick did not expose the mental impressions of Bard's counsel to
10 plaintiffs' counsel and his co-experts would be incredulous.

11 The various principles underlying disqualification as espoused by the *Wang Labs*
12 court—preventing the disclosure of confidential information to adverse parties,
13 maintaining judicial integrity, and reinforcing public confidence in the legal system—all
14 favor disqualification of all four doctors. Because of Dr. Resnick's direct and extensive
15 involvement in all aspects of the formation and drafting of the plaintiffs' expert reports,
16 each of these experts effectively has engaged in blatant “side-switching.” Within this
17 context, any suggestion that Drs. Vogelzang, Desai, and Lewandowski are distinct
18 individuals who should be analyzed separately from Dr. Resnick is based on the fiction
19 that the work and opinions they produced for the plaintiffs are not irrevocably intertwined
20 with that of Dr. Resnick. Accordingly, all of the doctors should be disqualified.

21 **C. Drs. Resnick, Vogelzang, Desai, and Lewandowski Should Be Disqualified
22 Under the Two-Factor Test.**

23 Even if the Court determines that the two-factor test applies, Drs. Resnick,
24 Vogelzang, Desai, and Lewandowski should still be disqualified.

25 **1. Bard Had an Objectively Reasonable Expectation of a Confidential
26 Relationship with Dr. Resnick.**

27 First, when Dr. Resnick was retained as an expert for Bard, he agreed that “you
28 may not disclose communications or other information disclosed to you in connection

1 with your engagement to any person or entity unless such disclosure is authorized by
 2 Nelson Mullins Riley & Scarborough LLP, or ordered by a court.” Ex. ___, Ltr. to S.
 3 Resnick, at 1. Likewise, in his work as a consultant to Bard in 2008, 2012, 2013, and
 4 2014, Dr. Resnick signed consulting agreements with Bard, each of which contained
 5 explicit confidentiality provisions that “[d]uring the term of this Agreement and thereafter,
 6 Consultant shall not: (i) disclose to any third party any of the Confidential Information . . .
 7 or (iii) use the Confidential Information for any purpose other than in connection with
 8 Consultant’s performance of Services.” *See* Ex. B, Consulting Agreements, at BPV-
 9 ResnickConsult_000002; 000009; 000018.

10 Courts have found that confidentiality provisions indicate a confidential
 11 relationship between the expert and the moving party. *See See Kane v. Chobani*, 2013
 12 WL 3991107 at *6 (N.D. Cal. Aug. 2, 2013) (confidential relationship found where
 13 disclosures were covered by a confidentiality provision in a written agreement); *Oracle*
 14 *Corp. v. DrugLogic, Inc.*, 2012 WL 2244305, at *6 (N.D. Cal. June 15, 2012) (holding
 15 that plaintiff had objectively reasonable expectation of confidential relationship with
 16 defendant’s disclosed expert because he previously signed multiple agreements with
 17 confidentiality provisions); *Lake Cherokee Hard Drive Techs. LLC v. Bass Computers,*
 18 *Inc.*, 2012 WL 708354, at *2 (E.D. Tex. Mar. 5, 2012) (finding a reasonable expectation
 19 of a confidential relationship because expert at issue signed a confidentiality agreement);
 20 *Rhodes*, 558 F. Supp. 2d at 671 (same); *Hewlett-Packard*, 330 F. Supp. 2d at 1098
 21 (asserting that confidentiality agreement memorializing expert’s relationship with party
 22 was indication of confidential agreement); *Stencil v. Fairchild Corp.*, 174 F. Supp. 2d
 23 1080, 1084 (C.D. Cal. 2001) (finding that confidentiality agreement indicates
 24 understanding of confidentiality between parties).

25 **2. Dr. Resnick Received and Had Access to Bard’s Confidential**
 26 **Information Related to Both the Instant Litigation and the Opinions**
 27 **Expressed in Drs. Vogelzang and Desai’s Expert Reports.**

28 Dr. Resnick’s confidential relationship with Bard granted him access to various

1 forms of Bard's confidential information that are directly relevant to this litigation.
 2 During Dr. Resnick's work as Bard's expert in the IVC filter litigation in 2015 and 2016,
 3 counsel for Bard shared with Dr. Resnick mental impressions regarding the strengths and
 4 weaknesses of the parties' themes and theories of the litigation, and the strengths and
 5 weaknesses of the relevant medical evidence. Moreover, during Dr. Resnick's work as a
 6 consultant for Bard, he received information pertaining to the testing and design of Bard's
 7 IVC filters; information pertaining to product investigations and potential health hazards,
 8 information salient to the design and development of animal studies for the G2 Platinum
 9 and Denali Filters, and information about Bard's development of future IVC filters.

10 The confidential information that Dr. Resnick was exposed to is of particular
 11 significance to the MDL plaintiffs' design-defect, failure-to-warn, misrepresentation, and
 12 negligence claims, all of which are intertwined with his opinions, and by extension his
 13 colleagues' opinions in this litigation given the experts' close coordination in the
 14 formation and drafting of the Rule 26 reports.. *See Rhodes*, 558 F. Supp. 2d at 679
 15 (holding that because factual and scientific issues in the instant litigation were so
 16 "intertwined" with the expert's prior engagement with the moving party that such issues
 17 were functionally the same for purpose of disqualification).

18 Moreover, courts have applied the two-part disqualification test to entities, such as
 19 SBBK, the consulting firm of Drs. Resnick, Vogelzang, Desai, and Lewandowski. *See*
 20 *Kane*, 2013 WL 3991107 at *5; *Mays v. Reassure Am. Life Ins. Co.*, 293 F. Supp. 2d 954,
 21 957-58 (E.D. Ark. 2003); *In re Ambassador Group., Inc.* 879 F. Supp. 237, 241-246
 22 (E.D.N.Y. 1994). In *Kane*, for example, Chobani, Inc. entered into a consulting and
 23 confidentiality agreement with EAS Consulting Group, a consulting group specializing in
 24 FDA regulation. 2013 WL 3991107, at *2. EAS provided services to Chobani related to
 25 Chobani's FDA-regulated labeling of its yogurt products. *Id.* After two years, EAS was
 26 approached by the plaintiffs in a pending lawsuit involving allegations that Chobani
 27 yogurt labels were misleading. *Id.* at **1, 3. An EAS consultant took the new
 28 engagement and continued consulting for Chobani. *Id.* at **3-4. Applying the two-part

1 analysis, the *Kane* court ruled that EAS as an entity was disqualified from the litigation
 2 because its “expert witness who previously worked for an adversary [had] . . . acquired
 3 confidential information during the course of their engagement.” *Id.* at *5.

4 Likewise EAS in *Kane*, SBBK (and by extension Drs. Resnick, Vogelzang, Desai,
 5 and Lewandowski) should be disqualified from this litigation. Dr. Resnick, a member of
 6 SBBK, entered into agreements with Bard and Bard’s attorneys where he was exposed to
 7 confidential information central to the MDL plaintiffs’ claims. Now, Drs. Vogelzang,
 8 Desai, and Lewandowski, through SBBK, are offering opinions against Bard about these
 9 very issues. Indeed, SBBK is more suitable for disqualification than EAS because
 10 Dr. Resnick actively and extensively contributed to the expert reports of his SBBK
 11 members against Bard, and thus SBBK was in a position to use the confidential
 12 information that it learned from Bard and its counsel to aid the plaintiffs. Even if
 13 Dr. Resnick has not explicitly relayed confidential details about Bard to his SBBK
 14 partners, which Bard views as an incredible position, there is a significant danger that the
 15 information affected opinions that made it into the expert reports that Dr. Resnick
 16 collaborated on with Drs. Vogelzang and Desai. *See, e.g., Michelson v. Merrill Lynch*
 17 *Pierce Fenner & Smith, Inc.*, 1989 WL 31514, at **3-4 (S.D.N.Y. Mar. 28, 1989) (noting
 18 that there is no way to “protect against a potential future breach” where defendant’s expert
 19 worked for moving party on issue related to litigation because conversations with moving
 20 party “could subliminally affect his testimony and assessment of facts” and “try as he
 21 might, [he] cannot possibly create separate spaces within his memory”); *see also, e.g.,*
 22 *Auto-Kaps, LLC v. Clorox Co.*, 2016 WL 1122037, at *5 (E.D.N.Y. Mar. 22, 2016)
 23 (noting that it is impossible for the plaintiff’s expert to segregate confidential information
 24 he acquired while previously working with defendant on similar products at issue because
 25 “[a]n expert cannot build a Chinese wall in his own mind, despite his best efforts to do
 26 so”).

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 28

1 **3. Policy Considerations Weigh in Favor of Disqualifying Drs. Resnick,**
 2 **Vogelzang, Desai, and Lewandowski.**

3 Disqualification of Drs. Resnick, Vogelzang, Desai, and Lewandowski is in
 4 accordance with courts' policy objectives, including preventing conflicts of interest,
 5 maintaining judicial integrity, and ensuring access to experts. First, Dr. Resnick's
 6 extensive involvement in the drafting of Drs. Vogelzang's and Desai's expert reports is a
 7 clear conflict of interest given his work for Bard as a litigation expert and his consultancy
 8 with Bard concerning IVC filters. Second, the continued participation of Drs. Resnick,
 9 Vogelzang, Desai, and Lewandowski threatens judicial integrity because it encourages
 10 parties to disclose experts that work closely with a conflicted, undisclosed expert, while
 11 allowing the conflicted expert to leverage his or her insider knowledge by actively
 12 collaborating on the expert opinion. In fact, courts have relied on the existence of ethics
 13 screens and/or limited contact between conflicted experts within the same entity to protect
 14 against disclosures of confidential information. *See, e.g. Stencel*, 174 F. Supp. 2d at 1086-
 15 1087 (treating imposition of ethics screens that insulate adverse attorneys as relevant to
 16 disqualification analysis, and viewing the location of experts at issue, who were employed
 17 by the same firm but in offices 500 miles apart as a factor militating against
 18 disqualification); *In re Ambassador*, 879 F. Supp. at 245 (noting that measures to wall off
 19 information between experts "dispel[s] fears of possible future disclosures off confidential
 20 information."); *Viscase Corp. v. W.R. Grace & Co.-Conn.*, 1992 WL 13679, at *2 (N.D.
 21 Ill. Jan 24, 1992) (noting that operating procedures within company restricted information
 22 to only those working within division); *Commonwealth Ins. Co. v. Stone Container Corp.*,
 23 178 F. Supp. 2d 938, 949 (M.D. Ill. 2001) (finding that disqualification is less likely
 24 where company's experts are situated in different offices and different states). Here, there
 25 is no such screen or distance protecting Bard's confidential information, and in fact
 26 Dr. Resnick worked closely with Drs. Vogelzang, Lewandowski on numerous expert
 27 reports. Finally, there is no likelihood here that other expert interventional radiologists
 28 are inaccessible to the plaintiffs if Drs. Resnick, Vogelzang, Desai, and Lewandowski are

1 disqualified. There are thousands of board certified interventional radiologists that do not
 2 have a conflict of interest with Bard in this IVC litigation. Indeed, the MDL plaintiffs
 3 have disclosed three other interventional radiologist experts who offer similar opinions.

4 **IV. Conclusion**

5 For each of these reasons, Defendants request that this Court grant Defendants'
 6 Motion and disqualify Drs. Resnick, Vogelzang, Desai, and Lewandowski as experts for
 7 the plaintiffs.

8 RESPECTFULLY SUBMITTED this 12th of July, 2017.

9 s/ Richard B. North, Jr.
 10 Richard B. North, Jr.
 11 Georgia Bar No. 545599
 12 Matthew B. Lerner
 13 Georgia Bar No. 446986
 14 NELSON MULLINS RILEY & SCARBOROUGH, LLP
 15 Atlantic Station
 16 201 17th Street, NW / Suite 1700
 17 Atlanta, GA 30363
 18 PH: (404) 322-6000
 19 FX: (404) 322-6050
 20 richard.north@nelsonmullins.com
 21 matthew.lerner@nelsonmullins.com

22 James R. Condo (#005867)
 23 Amanda Sheridan (#027360)
 24 SNELL & WILMER L.L.P.
 25 One Arizona Center
 26 400 E. Van Buren
 27 Phoenix, AZ 85004-2204
 28 PH: (602) 382-6000
 jcondo@swlaw.com
 asheridan@swlaw.com

29 **Attorney for Defendants C. R. Bard, Inc. and**
 30 **Bard Peripheral Vascular, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July 2017, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to all attorneys of record.

s/Richard B. North, Jr.
Richard B. North, Jr.